Pentadbir Tanah Daerah Seberang Perai Tengah & Anor v Bagan Serai Housing Estate Sdn Bhd

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01(IM)(NCVC)-382–11 OF 2015
ZAWAWI SALLEH, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA
25 AUGUST 2016

B

C

Land Law — Forfeiture — Validity of — Appellants forfeited respondent's land due to respondent's failure to pay quit rent — Respondent claimed that forfeiture proceedings wrongful and sought damages pursuant to s 134(4) of the National Land Code — Whether High Court had jurisdiction to deal with the matter — National Land Code s 134(1) & (4)

D

The respondent was the registered proprietor of a plot of land known as Lot 406, Mukim 1 Province Wellesley Central ('the said land'). Due to the failure of the respondent to pay the quit rent, the appellants had forfeited the said land. The respondent later brought an action for a declaration that the forfeiture proceedings were wrongful and damages pursuant to s 134(4) of the National Land Code ('the NLC'). The preliminary issue for determination was whether, pursuant to s 134(1) and (4) of the NLC, the High Court had jurisdiction to deal with the matter.

E

F

Held, allowing the appeal and setting aside the decision of learned trial judge with costs of RM70,000:

(1) Subsection 134(1) of the NLC was clear and unambiguous. It says, that any challenge to the validity of a forfeiture order had to be brought by way of appeal pursuant to s 418 of the NLC and not otherwise. Subsection 134(4) of the NLC did not lay down an excepting or qualifying proviso to the preceding provisions of the section. The two subsections serve different purposes. Based on the factual matrix of the case, the respondent's claim was not a simple claim for damages but consequential to the forfeiture. The primary relief sought by the respondent was a declaration that the forfeiture proceedings were wrongful and damages under s 134(4) of the NLC were sought as a consequence. Thus, in consideration of s 134 of the NLC, the learned judge lacked the requisite jurisdiction to hear the respondent's claim (see paras 27, 29 & 33).

G

H

I

[Bahasa Malaysia summary

Responden adalah tuan punya berdaftar sebidang tanah yang dikenali sebagai Lot 406, Mukim 1 Province Wellesley Central ('tanah tersebut'). Akibat kegagalan responden untuk membayar cukai tanah, perayu-perayu telah merampas tanah tersebut. Responden kemudiannya membawa tindakan bagi perisytiharan bahawa prosiding perampasan adalah salah dang anti rugi berikutan s 134(4) Kanun Tanah Negara ('KTN'). Isu awalan bagi penentuan adalah sama ada, berikutan s 134(1) dan (4) KTN, Mahkamah Tinggi mempunyai bidang kuasa untuk berurusan dengan perkara tersebut.

Diputuskan, membenarkan rayuan dan mengetepikan keputusan hakim perbicaran yang bijaksana dengan kos sebanyak RM70,000:

(1) Subseksyen 134(1) KTN adalah jelas dan tidak kabur. Ia menyatakan bahawa apa-apa bantahan kepada kesahan perintah perampasan mesti dikemukakan melalui rayuan berikutan s 418 KTN dan bukan sebaliknya. Subseksyen 134(4) KTN tidak menetapkan peruntukan yang diterima atau layak kepada peruntukan duluan seksyen tersebut. Kedua-dua subseksyen digunakan untuk tujuan berbeza. Berdasarkan matriks kes, tuntutan responden bukan tuntutan biasa untuk ganti rugi tetapi berbangkit daripada perampasan. Relief utama yang dipohon oleh responden adalah perisytiharan bahawa prosiding perampasan adalah salah dan ganti rugi di bawah s 134(4) KTN dipohon kerana akibat. Oleh itu, dalam pertimbangan s 134 KTN, hakim yang bijaksana tidak mempunyai bidang kuasa yang diperlukan untuk mendengar tuntutan responden (lihat perenggan 27, 29 & 33).]

Notes

For a case on validity of forfeiture, see 8(2) *Mallal's Digest* (5th Ed, 2015) para 3527.

Cases referred to

Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (M) Bhd [2008] MLJU 251; [2008] 6 CLJ 1, FC (refd)

Bagnall and another v McCarthy Commercials and others [2012] IEHC 205, HC (refd)

Dato' Seri Anwar Ibrahim v PP [2010] 7 CLJ 397, FC (refd)

Dato' Seri Anwar Ibrahim v Tun Dr Mahathir bin Mohamad [2011] 1 MLJ 145, FC (refd)

Kabushiki Kaisha Ngu v Leisure Farm Corporation Sdn Bhd & Ors [2016] MLJU 642, FC (refd)

Leisure Farm Corp Sdn Bhd v Kabushiki Kaisha Ngu & Ors [2015] 4 MLJ 543; [2015] 3 CLJ 489, CA (refd)

Manning v Benson and Hedges Ltd [2004] IEHC 316, HC (refd)

Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corpn Bhd

[1981] 2 MLJ 264; [1982] CLJ Rep 244, FC (refd)
Pengerusi Suruhanjaya Pilihanraya Malaysia (Election Commission of Malaysia) v See Chee How & Anor [2016] 3 MLJ 365; [2015] 8 CLJ 367, CA (refd)
Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim [2008] 3 MLJ 753; [2008] 5 CLJ 201, FC (refd)
Tan Soo Bing & Ors v Tan Kooi Fook [1996] 3 MLJ 547; [1997] 1 CLJ 556, FC (refd)
Tan Sri Eric Chia Eng Hock v PP (No 1) [2007] 2 MLJ 101; [2007] 1 CLJ 565, FC (refd)
Taylor and another v Lawrence and another [2002] 2 All ER 353, CA (refd)

Legislation referred to

Federal Constitution art 5(1)
National Land Code ss 97, 98, 100, 129, 130, 134, 134(1), (2), (4), 200, 418, 432, 432(1), Forms 6A, 8A

Appeal from: Civil Suit No 22–72–130 of 1996 (High Court, Pulau Pinang)

Malik Imtiaz Ahmed bin Ghulam Sarwar (Hjh Aliza Sulaiman and Pavendeep Singh with him) for the appellants.
M Thayalan (Jegathesen Karupiah and Mohd Iqbal with him) (Thayalan & Assoc) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

INTRODUCTION

[1] This was an appeal against the decision of the learned judge of the High Court at Pulau Pinang dated 5 November 2015, whereby His Lordship granted the respondent/plaintiff the following reliefs:

(a) satu pengisytiharan bahawa keseluruhan tindakan perampasan tanah Plaintif yang dikenali sebagai Lot 4382, Mukim I, Seberang Perai Tengah Pulau Pinang adalah salah dan atas alasan tersebut Plaintiff berhak untuk menuntut gantirugi daripada pihak Berkuasa Negeri Pulau Pinang menurut Seksyen 134(4) Kanun Tanah Negara, 1965;

(b) ... Penolong Kanan Pendaftar Mahkamah Yang Mulia ini diarahkan untuk membuat satu siasatan untuk mentaksirkan kerugian yang dialami oleh Plantif akibat perkara-perkara yang dinyatakan di atas;

(c) bahawa Defendan-Defendan membayar faedah keatas kerugian yang telah ditaksirkan di bawah Akta Undang-Undang Sibil, 1956.

[2] We had, after perusing the record of appeal and hearing and considering the written and oral submissions of learned counsel for the parties, allowed the appeal. We now give the detailed reasons for our decision.

[3] For ease of reference, the parties to this appeal will be referred to as they were in the court below.

BACKGROUND FACTS

[4] The parties have agreed to the following facts as set out in the statement of agreed facts:

(a) the plaintiff was the registered proprietor of Lot 406, Mukim 1 Province Wellesley Central ('the said land') which was, at the material times, held under interim register;

(b) the annual quit rent payable in respect of the said land as endorsed in the interim register is RM25,756.60 with effect from 1 January 1984;

(c) the said land was subject to lien holder's caveat presentation No 34/80 *Jld* 2 Folio 114 entered on 4 January 1980 by United Malayan Banking Corp Bhd ('UMBC') on the ground that the issue document of title of the said land was deposited with them as security for a loan;

(d) on 16 September 1992, the first defendant ie the Pentadbir Tanah Daerah, Seberang Perai Tengah, issued a notice in Form 6A dated 16 September 1992 to the plaintiff at the address No 1-C, Belfield Street, Ipoh, Perak demanding payment of RM126,853.17 as quit rent and arrears due in respect of the said land;

(e) the said notice in Form 6A could not be served by the first defendant because the plaintiff has changed its address from 1-C, Belfield Street, Ipoh to 32-1, Fair Park, Ipoh, Perak;

(f) Encik Ariffin bin Awang, the then Penolong Pentadbir Tanah Daerah, Daerah Seberang Perai Tengah caused the service of a notice in Form 6A by substituted service pursuant to s 432(1) of the National Land Code ('the NLC'). The said notice in Form 6A was published in the *gazette* vide notification No 454 dated 31 December 1992;

(g) a note of the substituted service of the said notice in Form 6A was entered in the interim register of the said land on 17 May 1993 vide forfeiture proceeding *Jld* 5 Folio 60 but was cancelled subsequently as wrongly entered on a date unknown;

(h) on 7 April 1993, the said Encik Ariffin bin Awang issued a notice in Form 8A dated 7 April 1993 stating that the said land has been forfeited to the state authority. The said Form 8A was issued before the endorsement of the note of the substituted service of Form 6A on the interim register of the said land;

(i) the said notice in Form 8A dated 7 April 1993 was *gazetted* vide GN No 115 dated 29 April 1993;

(j) on 17 June 1993, the notice of reversion to the state under *Jld* 1 Folio 68 was endorsed in the interim register of the said land but was cancelled subsequently as wrongly entered on a date unknown;

(k) on 22 October 1993, a new title in continuation of the said land was opened in the interim register for Lot 4382 and the note of the service of the Form 6A notice under *Jld* 5 Folio 60 and the notice of forfeiture I Form 6A of Lot 4382 under notice of forfeiture *Jld* 1 Folio 68 were entered in the interim register of Lot 4382 with only a mark 't.t' next to the said endorsement without the signature of the officer who entered the said endorsement;

(l) the first defendant did not serve any notice in Form 6A on UMBC and as a result of this UMBC lodged an objection to the defendants. Form 6A which was served by substituted service and published in the *gazette* dated 31 December 1992 was not directed at UMBC;

(m) in consideration of the payment of RM4,500,000 paid by the State Government of Penang, UMBC renounced all it's claim in respect of Lot 4382 under the lien holder's caveat registered on 27 December 1979 pursuant to its letter dated 20 May 1995 addressed to the second defendant; and

(n) on 5 July 1995, the state authority alienated Lot 4382 to Messrs Penaas Sayang Resort Sdn Bhd by way of 99 years lease expiring on 4 July 2094 in consideration of substantial payment of premium pursuant to qualified title under HS (D) No 5361, Mukim 1, District of Province Wellesley Central, Penang.

FINDINGS OF THE HIGH COURT

[5] The central issue before the High Court was whether the plaintiff's claim was caught by sub-s 134(1) of the NLC and as such the High Court had no jurisdiction to deal with the matter.

[6] The defendants took a preliminary issue that the High Court had no jurisdiction to hear the plaintiff's claim as the claim in substance sought to impugn the validity of the forfeiture of the said land. It was the contention of the defendants that the only procedure by which the plaintiff could assail the validity of the forfeiture was by way of an appeal to the High Court under sub-s 134(1) of the NLC read together with sub-s 418 of the NLC.

[7] The learned judge rejected the preliminary objection raised by the defendants. The learned judge reasoned:

(a) that the plaintiff's claim was brought pursuant to sub-s 134(4) of the NLC and was, as such, not caught by sub-s 134(1) of the NLC.

Therefore, the High Court had the jurisdiction to hear the matter;

(b) that the substituted service of Form 6A was not in accordance with law as the defendants had failed to show any proof of the second defendant having made an order to that effect under s 432 of the NLC;

(c) that the said land was forfeited before the note of service of Form 6A was endorsed on the title and this was fatal and in breach of s 100 of the NLC; and

(d) that the non-compliance was not a mere irregularity. The statutory provisions concerned were mandatory provisions that required strict compliance.

ANALYSIS AND FINDINGS

[8] In our view, the outcome of this appeal hinges on the proper and true interpretation of s 134 of the NLC. For ease of reference, the section is reproduced below:

> 134 Appeals against forfeiture.
>
> (1) The validity of any forfeiture under this Act shall not be challenged in any court except by means of, or in proceedings consequent upon, an appeal under section 418 against the order of the Land Administrator under section 100 or, as the case may be, 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said section 418.
>
> (2) No order of the Land Administrator under section 100 or 129 shall be set aside by any court except upon the grounds of its having been made contrary to the provisions of this Act, or of there having been a failure on the part of the Land Administrator to comply with the requirements of any such provision; and no such order shall be set aside by reason only of any irregularity in the form or service of any notice under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven unless, in the opinion of the court, the irregularity was of a significant nature.
>
> (3) In any such appeal or other proceedings as are mentioned in subsection (1), it shall be presumed until the contrary is proved that all notices required to be served under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven were duly and regularly served.
>
> (4) The provisions of sub-section (1) shall not affect the right of any person or body to bring an action of damages against the State Authority, or (subject to the provisions of section 22) against any officer appointed by the State Authority, in respect of any act or thing wrongfully done, or ordered to be done or omitted to be done, in connection with any forfeiture under this Act.

[9] It seems to us that the section is quite simple and straightforward. It provides that the validity of any forfeiture under the NLC shall not be

challenged in any court except by means of, or in proceedings consequent upon, an appeal under s 418 against the order of the collector under s 100. An order of forfeiture can only be set aside on grounds circumscribed by the provisions of sub-s 134(2), ie, the order having been made contrary to the provisions of the Code or there having been failure on the part of the collector to comply with the requirements of any such provisions. Subsection 134(2) also provides that no such order shall be set aside by reason only of any irregularity in the form or service of any notice under ss 97 and 98 unless, in the opinion of the court, the irregularity was of a significant nature.

[10] The difficulty in interpreting s 134 of the NLC is basically this. How does one reconcile sub-s 134(1) with sub-s 134(4)? The opening words of the sub-s 134(4) are these:

> The provisions of subsection (1) shall not affect the right of any person of body to bring an action of damages ...

[11] The critical question is whether sub-ss 134(1) and 134(4) are distinctly separate.

[12] This immediately brings us to the contention on behalf of the plaintiff that it is clear from a careful reading of sub-ss 134(1) and 134(4), the remedies available are distinctly separate. Learned counsel submitted, as he did in the High Court, that if the purpose of the proceedings filed by an aggrieved party is to seek the annulment of the forfeiture order, then the only available course of action is to appeal under s 418 of the NLC. However, if the proposed action is limited to a claim for damages only (as is the present case) such claim would fall within the four corners of sub-s 134(4) of the NLC.

[13] Learned counsel vehemently defended the interpretation of the learned judge and argued that the learned judge below was correct when he concluded that the appeal referred to in sub-s 134(1) of the NLC is for the purpose of setting aside any order of the land administer under ss 100 or 200, whereas sub-s 134(4) covers the scenario where any person or body wishes to seek damages in a civil suit either against the state authority or any land officer. Subsection 134(4) can stand independently by itself.

[14] Learned counsel referred us to the relevant part of the grounds of judgment where the learned judge reasoned his conclusion as follows:

> ... Here, the relief sought is one under s 134(4) of the NLC, the provision that begins with the words 'The provision of subsection (1) shall not affect the right of any person or body to bring an action of damages'. This words must to my mind, means as they are, that is the requirement of s 134(1) for the aggrieved person to

bring the case to court only by way of appeal is not applicable for the action under 134(4)).

(See pp 52–53 *rekod rayuan* (*Bahagian* A — *Jld* I).

[15] The learned judge sought to drive home his point by relying on the views expressed by Judith Sihombing in the text book, *National Land Code, A Commentary* (2nd Ed) wherein the author observed:

> Sub-section 4
>
> Forfeiture can be appealed against only by reference to section 418 and, thus, if successful, the forfeiture will be set aside.
>
> This sub-section allows any person or body to seek damages in a civil suit either against the State Authority or any land officer. Apart from action by the proprietor or any person or body with an interest in the land who thereby has contractual relationship with the State Authority, any such action must be in tort. Section 22 limit such cause of action against the land officer to one where the officer acted ultra vires and mala fides.

[16] The learned judge then concluded as follows at p 59:

> Although there is no authority stated there is support of such a comment that subsection allows any person or body to seek damages in a civil suit and that I am in no way bound by it, but for the reason I have alluded the above, I am in agreement with it. Such action under s 134(4) of the NLC may be brought to court by way of a civil suit.

[17] The gravamen of the defendants' complaint was that the learned judge erred in failing to hold that the plaintiff's claim in substance pertains to the forfeiture of the said land. According to learned counsel, the main argument advanced by the plaintiff was that the forfeiture was wrongful in law as ss 97, 100 and 130 of the NLC were allegedly contravened. Therefore, in essence, the plaintiff was challenging the validity of the forfeiture of the said land. As such, the claim for damages, albeit pursuant to sub-s 134(4) of the NLC, is consequential to the granting of the declaration. It was not a civil suit simpliciter, but in fact a claim for damages consequent upon the order of forfeiture.

[18] Learned counsel for the defendants had argued vigorously that the plaintiff's action was not maintainable on the ground that the learned judge did not have jurisdiction to grant the primary remedy sought and erroneously assumed jurisdiction to do so.

[19] A number of cases were cited to us in support of the submission (see *Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corpn Bhd*

[1981] 2 MLJ 264; [1982] CLJ Rep 244; *Tan Soo Bing & Ors v Tan Kooi Fook* [1996] 3 MLJ 547; [1997] 1 CLJ 556). The key principle that can be discerned from these cases is that any challenge to a validity of a forfeiture order had to be brought by way of an appeal pursuant to s 418 of the NLC.

[20] To buttress his submission, learned counsel referred us to Parliament's *Hansard* dated 10 August 1965 where at pp 1625–1653, the then Minister of Home Affairs, Dato' Dr Ismail said:

> Mr Speaker, Sir the Honourable Member for Tanjong complains that there are insufficient safeguards for proprietors whose land is forfeited for non-payment of rent or for breach of condition. In particular, he asserts that there is no right of appeal. In this, I fear the Honourable Member is in error. I do not blame him for that, as he admitted that he might be mistaken. There is a right to appeal, and I would like to mention the specific sections here. They are clauses 133, 134 and 418.

[21] In a nutshell, the main plank of learned counsel's submission is that the High Court is only empowered to consider, and to grant relief in connection with, challenges to the validity of forfeiture of the land under s 418 of the NLC where such challenges are brought pursuant to appeals mounted under s 418 of the NLC against decision made by the land administrator under ss 100 or 129 of the NLC.

[22] The starting point for discussion in this instant appeal is the issue of jurisdiction. In our view, the moment the issue of jurisdiction was raised (as is in the instant case), such issue had to be decided first as valuable time could be saved in case it is found that the court does not have jurisdiction. Jurisdiction is a question of law and a court is precluded from adjudicating the matters on merits when itself lacks jurisdiction. Therefore, the question of jurisdiction has to be decided as a preliminary issue.

[23] The expression 'jurisdiction', as stated in *Halbury's Laws of England*, Vol 10 para 314, is as follows:

> 314. Meaning of ' jurisdiction': By ' jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.
>
> If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as the area over which the jurisdiction extends, or it may partake of both these characteristics.

[24] In *American Jurisprudence* Vol 32A, para 581, it is said that:

A Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.

B **[25]** It is pertinent to note that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties. Even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the court has no jurisdiction, it cannot confer jurisdiction upon itself by the C consent or waiver of the parties (see *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 7 CLJ 397; *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (M) Bhd* [2008] MLJU 251; [2008] 6 CLJ 1; *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101; [2007] 1 CLJ 565; *Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim* [2008] 3 MLJ D 753; [2008] 5 CLJ 201; *Taylor and another v Lawrence and another* [2002] 2 All ER 353).

[26] We have carefully considered the submissions of both parties which E were presented with skill and restraint and we are grateful to them both. We have also considered the facts and materials on record. We agreed with the submission of learned counsel for the defendants that the learned judge fell into serious error in ruling that he had jurisdiction to hear the plaintiff's claim.

F **[27]** In our view, sub-s 134(1) of the NLC is clear and unambiguous. Simply put, it says that any challenge to the validity of a forfeiture order had to be brought by way of appeal pursuant to s 418 of the NLC and not otherwise. Subsection 134(4) of the NLC does not lay down an excepting or qualifying proviso to the preceding provisions of the section. It is 'an independent G enacting clause' that permits any person or body to seek damages in a civil suit either against the state authority or any land officer where consequential relief is not related to the forfeiture order. There is no conflict between the two subsections. They serve different purposes.

H **[28]** Our conclusion that sub-s 134(4) of the NLC should be interpreted that way and not as a proviso is reinforced by the absence in the section of words such 'Notwithstanding what is provided in subsection (i)'; 'Except as is provided in subsection (4)' or, 'Provided that ...'. As things stand, there is no indication of an intention in sub-s 134(4) to qualify sub-s 134(1).

I

[29] On the factual matrix of the instant appeal, we were of the opinion that the plaintiff's claim was not a simple claim for damages but consequential to the forfeiture. The primary relief sought by the plaintiff was a declaration that the forfeiture proceedings were wrongful and damages under sub-s 134(4) of

the NLC were sought as a consequence. At the risk of repetition, the relief sought by the plaintiff was as follow:

> (a) satu pengisytiharan bahawa *keseluruhan tindakan perampasan tanah Plaintif yang dikenali sebagai Lot 4382, Mukim 1, Seberang Perai Tengah, Pulau Pinang adalah salah* dan atas alasan tersebut Plaintif berhak untuk menuntut gantirugi daripada Pihak Berkuasa Negeri Pulau Pinang menurut seksyen 134(4) Kanun Tanah Negara. (Emphasis added.)

[30] The plaintiff claimed to be aggrieved by a decision of the Land Administrator made pursuant to s 100 of the NLC and the primary relief sought, was a declaration that 'keseluruhan tindakan perampasan Plaintiff ... adalah salah'. We entertained no doubt that the claim for damages was consequential to the granting of the declaration. This was made clear by the pleaded position: 'atas alasan tersebut Plaintiff berhak untuk menuntut gantirugi daripada Pihak Berkuasa Negeri Pulau Pinang menurut seksyen 134(4) Kanun Tanah Negara 1965'.

[31] With respect, the plaintiff's contention that its claim for damages under sub-s 134(4) was an alternative claim flies in the face of the amended statement of claim and the learned judge was erroneous in affording such a reading to the pleading. Further, where the claim under s 134(4) of the NLC is for tort, then the specific cause of action must be identified, for instance, negligence or breach of statutory duty and the pleading of such a claim must be directed to the wrongful act or omission complained of and not the for feiture of land. The plaintiff had not done so.

[32] Before we conclude, it also pertinent to note that there was inordinate and inexcusable delay on the part of the plaintiff in instituting the present civil suit. It had seriously prejudiced the defendants by impairing their ability to defend themselves and the guarantee of a fair trial in art 5(1) of the Federal Constitution (see *Manning v Benson and Hedges Ltd* [2004] IEHC 316; *Bagnall and another v McCarthy Commercials and others* [2012] IEHC 205. It goes without saying that the defendants' ability to gather documentary evidence and witnesses was severely hampered.

[33] We, therefore, after giving our anxious consideration to the provisions of s 134 of the NLC unanimously held that the learned judge lacked the requisite jurisdiction to hear the plaintiff's claim. Hence, we had allowed the appeal. We set aside the impugned decision passed by the learned judge.

THE PLAINTIFF'S CROSS-APPEAL

[34] The plaintiff's cross appeal is a non-starter. It does not seek to vary the judgment of the High Court but findings in the grounds of judgment. In *Dato*'

Seri Anwar Ibrahim v Tun Dr Mahathir bin Mohamad [2011] 1 MLJ 145, Arifin Zakaria CJ stated at pp 154–155:

> ... a party may appeal against the judgment and not against some findings or statement which may be found in the reasoning given by the judge in support of a judgment or order.

(See also *Pengerusi Suruhanjaya Pilihanraya Malaysia (Election Commission of Malaysia) v See Chee How & Anor* [2016] 3 MLJ 365; [2015] 8 CLJ 367; *Leisure Farm Corp Sdn Bhd v Kabushiki Kaisha Ngu & Ors* [2015] 4 MLJ 543; [2015] 3 CLJ 489 (CA); *Kabushiki Kaisha Ngu v Leisure Farm Corporation Sdn Bhd & Ors* [2016] MLJU 642).

[35] In any event, the issue of UMBC being paid compensation by the defendants is wholly irrelevant to the present claim by the plaintiff. We, therefore, dismissed the cross-appeal.

[36] Before we conclude, it must be emphasised that the right to appeal is a statutory right and one who seeks to avail of that right must comply strictly with the procedures. For sure, observance of the prescribed procedure is not a mere technicality but mandatory and jurisdictional as well.

COSTS

[37] We awarded costs of RM70,000 here and below to the defendants/appellants. The deposits were ordered to be refunded.

Appeal allowed and the decision of learned trial judge set aside with costs of RM70,000.

Reported by Dzulqarnain Ab Fatar